

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF WASHINGTON

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5 DOUGLAS ADAMS and TRINA ADAMS,
husband and wife,

6 Plaintiff,

7 v.

8
9 LUANNE C. TUNMORE and JOHN DOE
10 TUNMORE, wife and husband, and
the CONFEDERATED TRIBES OF THE
11 COLVILLE RESERVATION,

12 Defendant.

No. CV-05-270-FVS

ORDER DENYING MOTION
TO REMAND TO STATE COURT

13
14 **BEFORE THE COURT** is the Plaintiffs' Motion to Remand to State
Court, Ct. Rec. 8. The Court held a telephonic hearing on November
15 3, 2005. Plaintiffs were represented by Thomas Janisch. Defendants
16 were represented by Everett Coulter, Jr. This Order is intended to
memorialize and supplement the Court's oral ruling.

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18 **I. BACKGROUND**

19 This case involves an action for damages stemming from a motor
20 vehicle accident on August 8, 2002, between Plaintiff Trina Adams and
21 Defendant Luanne Tunmore. The accident occurred on a Washington
22 State highway. At the time of the accident, Defendant Tunmore was
23 allegedly operating a vehicle in the course and scope of her
24 employment with the Paschal Sherman Indian School (hereinafter
25 "PSIS"). The vehicle was registered to the Colville Confederated
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1 Tribes of the Colville Reservation (hereinafter the "Tribe"). PSIS
2 is operated by the Tribe pursuant to a grant from the United States
3 Department of Interior, Bureau of Indian Affairs, which is commonly
4 referred to as a Public Law 100-297 Tribally Controlled School Grant.
5 Plaintiffs' Complaint alleges negligence on the part of Defendant
6 Tunmore and vicarious liability against the Tribe.

7 Plaintiffs originally filed this suit on August 5, 2005, in
8 Okanogan County Superior Court. Defendants filed a petition for
9 removal to federal court on September 6, 2005, under 28 U.S.C. §§
10 1441 and 1442, asserting this Court has original jurisdiction over
11 this action under 28 U.S.C. § 1333(b). Plaintiffs now move to remand
12 this case back to state court pursuant to RCW 37.12.010(8), which
13 allows the State of Washington to exercise jurisdiction over an
14 action for damages for negligence arising from a vehicle accident on
15 a State highway.

16 **II. DISCUSSION**

17 Because Defendants removed this case to federal court, they bear
18 the burden of proving removal was appropriate and that this Court has
19 jurisdiction. See *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.
20 1992). Defendants contend removal was appropriate because Congress
21 has provided that a tort action committed in fulfillment of a
22 Tribally Controlled School Act grant between the United States and a
23 Native American Tribe invokes coverage under the Federal Tort Claims
24 Act. Thus, Defendants contend removal was proper because there is
25 federal question jurisdiction.

26 Public Law No. 101-512, Title III, § 314 (1990) provides, in

1 relevant part:

2 With respect to claims resulting from the performance of
 3 functions ... under a contract, grant agreement, or ... by
 4 Tribally Controlled School Grants of the Hawkins-Stafford
 5 Elementary and Secondary School Improvement Amendments of
 6 1988, ... an Indian tribe, tribal organization or Indian
 7 contractor is deemed hereafter to be part of the Bureau of
 8 Indian Affairs in the Department of the Interior ... while
 9 carrying out any such contract or agreement and its
 10 employees are deemed employees of the Bureau or Service
 while acting within the scope of their employment ... any
 civil action or proceeding involving such claims brought
 hereafter against any tribe, tribal organization, Indian
 contractor or tribal employee covered by this provision
 shall be deemed to be an action against the United States
 and will be defended by the Attorney General and be
 afforded the full protection and coverage of the Federal
 Tort Claims Act[.]

11 25 U.S.C. § 450f Note. In other words, if at the time of the
 12 collision, Defendant Tunmore was acting within the course and scope
 13 of her employment pursuant to a Tribally Controlled School Grant, the
 14 torts or negligent acts of her and the Tribe are deemed acts of the
 15 United States and are subject to the Federal Tort Claims Act. See
 16 e.g., *Comes Flying v. United States Bureau of Indian Affairs*, 830
 17 F.Supp. 529, 529-30 (D. S.D. 1993); *Waters v. United States*, 812
 18 F.Supp. 166, 168 (N.D. Cal. 1993). Thus, the Court would have
 19 original jurisdiction and removal would be proper under 28 U.S.C.
 20 §§ 1441(b) and 1442. Therefore, the controlling question is whether
 21 Defendant Tunmore was acting in the course and scope of her
 22 employment with PSIS and was serving under a Tribally Controlled
 23 School Grant.

24 Here, the PSIS is operated by the Tribe pursuant to a Tribally
 25 Controlled School Grant, Public Law 100-297, with the United States
 26 Department of Interior, Bureau of Indian Affairs. This grant has

been commonly referred to as the "Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988" and codified in part under 20 U.S.C. § 2701. Plaintiffs concede that Ms. Tunmore was acting in the course and scope of her employment with the PSIS at the time of the collision. Therefore, the Court determines the collision is subject to the Federal Tort Claims Act, over which the Court has original jurisdiction. Thus, removal was proper and the motion for remand is denied. Accordingly,

IT IS HEREBY ORDERED that the Plaintiffs' Motion to Remand to State Court, Ct. Rec. 8, is **DENIED**.

IT IS SO ORDERED. The District Court Executive is hereby directed to enter this Order and furnish copies to counsel.

DATED this 7th day of November, 2005.

s/ Fred Van Sickle
Fred Van Sickle
United States District Judge